

## REMARKS

### 1. Status of the Claims and Formal Matters

#### a. Amendments

Claims 1-2 and 5-26 are pending in this application. Claims 9-10 and 13-20 are withdrawn from further consideration.

Claims 2, 5-7, 9-10, 13, 15-22 and 24-25 are hereby cancelled without prejudice to pursuing these claims in a continuing application. Claims 1 and 26 are amended. Upon entry of these amendments, claims 1, 8, 11-12, 14, 23 and 26 are pending and under active consideration. Applicant respectfully requests entry of the amendments and remarks made herein into the file history of the present application.

Claim 1 is amended to recite that the nucleic acid consists of 77 up to 120 nucleotides, support for which may be found throughout the application including SEQ ID NO: 14.

Claim 26 is amended to recite that the sequence of the nucleic acid consists of the sequence of SEQ ID NO: 14.

#### b. Interview Summary

The undersigned would like to thank Examiner DeJong for the courtesy of the telephone interview of July 28, 2006 during which the cited art, claim scope, and possible amendments were discussed. In addition, the deficiencies of Fire et al., Nature (1998) as a possible reference were discussed.

### 2. Patentability Rejections

#### a. § 112, second paragraph

At page 2 of the Office Action, the Examiner rejects claims 1, 2, 5-8, 11-12, 14 and 21-26 under 35 U.S.C. § 112, second paragraph, as being indefinite.

With respect to claim 1, the Examiner alleges that it is unclear how any nucleic acid comprising about 50 to about 76 nucleotides can meet the limitation of comprising the sequence of SEQ ID NO: 14, which is a 77 nucleotide sequence. Applicant respectfully disagrees. However, in the interest of advancing prosecution the Applicant has amended claim 1 to recite that the nucleic acid is 77 to 120 nucleotides. Accordingly, Applicant respectfully requests that the rejection of claim 1, and dependent claims 2, 5-8, 11-12, 14 and 21-25, be reconsidered and withdrawn.

With respect to claim 26, the Examiner alleges that the limitation “the sequence set in SEQ ID NO: 14” is unclear. Applicant respectfully disagrees. However, in the interest of advancing prosecution the Applicant has amended claim 26 to recite that the sequence of the nucleic acid consists of the sequence set of SEQ ID NO: 1. Accordingly, Applicant respectfully requests that the rejection of claim 26 be reconsidered and withdrawn.

**b. Obviousness-Type Double Patenting**

At page 4 of the Office Action, the Examiner provisionally rejects claims 1, 8, 11-12, 14 and 23 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8, 12 and 14 of copending Application No. 10/536,560; claims 1-8, 12 and 15 of copending Application No. 10/605,840; claims 1-8, 12 and 14 of copending Application No. 10/707,003; claims 1, 2 and 4 of copending Application No. 10/708,952; and claims 1, 2 and 5 of copending Application No. 10/709,739.

In view of the amendments and remarks made herein, Applicant believes that the only outstanding rejection is the obviousness-type double patenting rejection, which will allow the Examiner to withdraw the provisional rejection and convert it to a double patenting rejection in the co-pending cases. In view of the instant application being filed earlier than the cited applications, Applicant respectfully requests that the obviousness-type double patenting rejection be withdrawn pursuant to MPEP 804.I.B.1.

**c. § 102(b)**

At page 5 of the Office Action, the Examiner rejects claims 1, 8, 11-12, 14 and 23 under 35 U.S.C. § 102(b) as being anticipated by Brander et al. ("Brander").

With respect to claims 1 and 23, the Examiner alleges that Brander discloses the isolated and submission of HIV-1 viral derived gene under accession number AF017925 which has 100% identity to that of elected sequence SEQ ID NO: 14. Applicant respectfully disagrees. The sequence set forth under accession number AF017925 consists of 451 nucleotides. Claims 1 and 8 have been amended to recite that the nucleic acid is from 77 to 120 nucleotides. The claimed sequence is, therefore, distinct from the cited sequence set forth under accession number AF017925. Accordingly, Applicant respectfully requests that the rejection be reconsidered and withdrawn.

With respect to claims 8, 11-12 and 14, Applicant reiterates the arguments set forth above. The cited 451 nucleotide sequence set forth under accession number AF017925 is distinct

from the sequence as presently claimed. Accordingly, Applicant respectfully requests that the rejection be reconsidered and withdrawn.

### **3. Conclusion**

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

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